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DISTRICT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

THE UNITED STATES OF AMERICA and DAVID R. HOFFMAN, Plaintiffs,	)
v.	) CASE NO: 3:12 CV 237
NATIONAL COLLEGE a/k/a NATIONAL COLLEGE OF KENTUCKY INC., and DOES 1 through 50, inclusive, Defendants.	)

AMENDED COMPLAINT FOR DAMAGES, WITH DEMAND FOR JURY TRIAL

Causes of Action:

1. Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval claim, in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(A).

2. Knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim, in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(B).

3. Conspiracy to Make False Statements to Get a False or Fraudulent Claim Paid or Approved, in Violation of the False Claims Act, 31 U.S.C. § 3729(a)(1)(C).

Plaintiff, David R. Hoffman, alleges as follows:

I. Introduction

1. (a) This is an action to recover damages and civil penalties on behalf of the United States of America arising out of actions and a conspiracy by Defendants, National College, (hereinafter "National") and Does 1 through 50, to conceal certain truthful information from students, accreditors and lenders that would adversely impact National's ability to maintain its

accreditation. National has, by threat of retaliatory discharge, forced its faculty members to sign agreements designed to prevent faculty members from sharing important information with any "student, . . . accreditor, regulator, lender, or any other individual, company, agency, or institution. . . ." By forcing silence from its faculty members in their communications with students, lenders and accreditors, National prevents faculty members from sharing derogatory, but nonetheless truthful information. This allows National to maintain its accreditation under false and fraudulent pretenses, and causes students to apply for and receive federal student loan money without a full understanding of the benefits, or lack thereof, of a National education.

(b) National owns and operates approximately 30 college campuses in 6 different states. National operates one such campus at 1030 E. Jefferson Boulevard, South Bend, IN 46617, which is located within the Northern District of Indiana. Pursuant to the Higher Education Act, Title IV (hereinafter "HEA"), National receives HEA federal student financial aid funds from the United States Department of Education. The vast majority of National's students rely upon loans funded by the United States Department of Education to pay their tuition. In order to maintain student eligibility for the receipt of federally funded loans, National, like other schools, must maintain accreditation by an agency approved by the Secretary of Education. National is accredited by the Accrediting Council for Independent Colleges and Schools (hereinafter ACICS).

ACICS conducts campus visits and interviews school faculty as a routine part of its accreditation process. These campus visits and faculty interviews are vital toward ensuring that member schools meet or exceed all accreditation requirements. Under threat of termination, National has forced all of its faculty members to sign a document entitled "Confidentiality and

Non-Disparagement Agreement." This document contains a liquidated damages provision which requires any faculty member who says anything derogatory concerning National to pay the school liquidated damages in the amount $1,000.00 for each derogatory statement. National intends to enforce this financial penalty against faculty even in instances where the statements are completely accurate and truthful. By engaging in this practice, National is actively intimidating and coercing its faculty into withholding derogatory information from ACICS and its students, as well as lenders and federal regulators.

(c) National's compliance with the accreditation requirements of ACICS is a core prerequisite to maintaining National's eligibility for Title IV funds. By effectively gagging its faculty members in their communications with ACICS, National is able to deceive ACICS team members and students. By use of this fraud and deception, National requests and receives HEA dollars under Title IV in the form of federally funded student loans.

(d) National has, and continues to have, actual knowledge that it is preventing and coercing its employees from cooperating with and communicating useful information to ACICS. In so doing, National maintains accreditation and receives Federal Student Loan money under false and fraudulent pretenses. National submits and conspires to submit false and fraudulent claims to the government for student loan payments while knowing that it maintains accreditation through fraud and coercion.

(e) Alternatively, National is acting with deliberate indifference and/or reckless disregard as to the truth or falsity of claims regarding accreditation compliance.

(f) Plaintiff asserts causes of action under the False Claims Act for knowingly submitting or conspiring to submit false or fraudulent claims for payment or approval, and knowingly submitting or conspiring to submit false records or statements to get a false or fraudulent claim paid or approved, in violation of 31 U.S.C. § 3729(a)(1)(A), (B) and (C).

II. Jurisdiction and Venue

2. (a) This is an action brought pursuant to the False Claims Act, 31 U.S.C. §§ 3729, et seq., and subject matter jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

(b) This case arises from the wrongful conduct of the Defendants incident to obtaining funds from the United States of Department of Education pursuant to the Higher Education Act, Title IV.

3. This Court has in personam jurisdiction over the Defendant under 31 U.S.C. § 3732(a), which authorizes nationwide service of process.

4. (a) 31 U.S.C. § 3732(a) provides "Any action under section 3730 may be brought in any judicial district in which the Defendant or, in the case of multiple Defendants, any one Defendant, can be found, resides, transacts business, or in which any proscribed by section 3729 occurred."

(b) Venue is proper in the Northern District of Indiana because Defendant National maintains and operates its South Bend campus within the Northern District of Indiana.

III. Plaintiff

5. (a) Qui Tam Plaintiff David R. Hoffman (hereinafter "Hoffman") is a citizen of the United States of America and is a resident of Saint Joseph County, in the State of Indiana.

(b) Hoffman worked for Defendant National from August 30, 2010 through February 17, 2012 as a faculty member and course instructor at National's South Bend, Indiana campus.

(c) Hoffman brings this action on behalf of the United States of America.

6. (a) As required under the False Claims Act, 31 U.S.C. § 3730(a)(2), Relator, simultaneously with the filing of this Amended Complaint, provided to the United States Attorney for the Northern District of Indiana and the Attorney General a statement of all material evidence and information related to this Amended Complaint.

(b) This disclosure statement supports the existence of "submission of a knowingly false or fraudulent claim for payment or approval," under the False Claims Act (31 U.S.C. § 3729(a)(1)(A),(B) and (C).

8. (a) The United States of America is here named a Plaintiff because funds of the United States of America ("Federal funds") have been and continue to be awarded to Defendant National College, pursuant to the HEA, Title IV, as a result of the false claims alleged in this Amended Complaint.

IV. Defendants

9. (a) Defendant National College is a for-profit higher education institution providing post-secondary educational programs and degrees for adult students.

(b) National owns and operates 30 college campuses in 6 different states. National operates one such campus at 1030 East Jefferson Blvd, South Bend, IN 46617.

10. (a) Relator is unaware of the true names and capacities of the Defendants sued as Does 1 through 50. (b) Plaintiffs will amend their complaint when the true names and capacities have been ascertained.

(c) Each Doe Defendant is responsible in some actionable manner for the events, occurrences, injuries and damages alleged herein.

11. The terms "Defendants" will refer collectively to the aforesaid Defendants acting by and through their managerial employees, and each of them.

12. Managerial employees of the Defendants, in doing the acts and things described in this Complaint, were acting within the course and scope of their respective agencies and/or employment with the Defendants, and each of them, with the knowledge and consent of the Defendants, and each of them, unless otherwise indicated.

13. At all relevant times each Defendant was the authorized agent of each other Defendant.

V. Specific False Claims and Fraudulent Statements

A. Summary of the Fraudulent Conduct

14. (a) The Higher Education Act, Title IV ("HEA"), requires colleges and universities to maintain accreditation by a nationally recognized accreditation agency in order for the school to establish eligibility to participate in Title IV programs. This statutory prerequisite for accreditation is a core requirement for an educational institution's eligibility to request and receive Title IV funds.

15. (a) The United States Government awards approximately $6 billion a year to help students obtain their educations at colleges and vocational schools.

(b) The federal funds, however do not go to the students.

(c) Instead, the educational institution requests the funds of the United States Department of Education or a third party intermediary lender. The United States Government or the lender wires the funds directly into the institutions' accounts. The institutions then credit their students for tuition and return any surplusages to the students.

16. (a) Students are responsible for paying back the United States Government the entire loan amount once they graduate or stop attending the university.

(b) Students who graduate having received insufficient education or training to secure employment must still repay the federal loans.

(c) These students are forced into dire financial situations causing them to default in their loan obligations to the government. National, meanwhile, retains the fraudulently obtained federal funds.

17. (a) National College, in flagrant violation of its accreditation obligations, forces each and every faculty member to sign a document entitled "Confidentiality and Non-Disparagement agreement." This document forbids faculty from providing any information to any of National's accreditors, students, lenders or regulators which "disparages, or is derogatory of National College or its affiliates or any of the respective officers, directors, employees, students or educational programs." National specifically enacted this ban on the faculty members' speech to prevent faculty from disseminating truthful information which could affect the college's ability to collect and receive federally funded student loans.

(b) Plaintiff, Hoffman, protested the moral and ethical dilemma that signing this document would place him in should accreditors ask him specific questions about National. Hoffman specifically asked National to change the document so that it would punish faculty only if they engaged in slanderous or defamatory conduct. National refused to modify the agreement and terminated Hoffman based solely on his refusal to sign this document.

18. (a) National's policy of forcing all faculty to sign its "Confidentiality and Non-Disparagement Agreement" prevents faculty members from complying with their ethical

obligations to current and potential students to discuss school matters. Likewise, this policy prevents faculty from engaging meaningfully in accreditation campus visits, and requires that faculty conceal derogatory information from lenders and accreditors who interview faculty members. The obvious result is that National keeps and maintains its accreditation and student enrollment by concealing the truth about National College. As a direct result, National receives and keeps federal student loan money that it would not otherwise be entitled to receive. Students who borrow federal money in order to attend National are often left with no job prospects and huge loans owed to the government, which they cannot repay.

B. By Law, National Must Maintain Accreditation for Eligibility to Receive Federal Funds

19. (a) Educational institutions request Title IV funds for eligible students through several programs, including the Federal Pell Grant Program ("Pell"),the Federal Supplemental Educational Opportunity Grant Program ("FSEOG"), the Federal Perkins Loan Program ("Perkins") and the Federal Family Education Loan Program ("FFELP").

20. (a) For an educational institution to be eligible to receive these Title IV grant funds, federal statutes and regulations require the institution to obtain and maintain accreditation from an agency listed by the Secretary of Education on the Secretary's list of nationally recognized accrediting agencies.(See *20 USCS § 1099b*) School accreditation from an agency listed by the Secretary of Education is a mandatory prerequisite for the school's eligibility to request and receive Title IV funds. (See Application for Approval to Participate in the Federal Student Financial Aid Programs)

21. (a) An educational institution is ineligible to receive Title IV funds without proper accreditation.

(b) National is accredited by the Accrediting Council for Independent Colleges and Schools (ACICS). ACICS is recognized and listed by the Secretary of Education as a nationally recognized accrediting agency.

22. (a) ACICS sets forth and publishes "Accreditation Criteria Policies, Procedures, and Standards" by which school seeking its accreditation must abide.

23. (a) Section 2-1-500 - of ACICS' "Accreditation Criteria Policies, Procedures, and Standards" outlines the visitation team functions and procedures followed during accreditation visits. Favorable accreditation team visit reports are necessary for National to maintain its accreditation.

(b) Accreditation Criteria Policies, Procedures, and Standards Section 2-1-500 - specifies that "During the visit, institutions are expected to make provisions for adequate consultation between team members and the faculty, administrative staff, and students. Some teams also may want to consult with the institution's board of directors or trustees and community leaders or employers. The team prepares a written report that covers each area reviewed at the institution and includes other information pertinent to an accurate evaluation. The report subsequently is sent by the team chair to ACICS."

c) Thus, accurate team visit reports depend upon direct, open and honest interaction with staff and faculty. This open interaction does not and cannot occur so long as National continues to intimidate faculty with threats of termination and liquidated damages should they provide accreditors with anything other than favorable information. ACICS ultimately reviews the team evaluation report and determines whether or not to grant or continue a grant of accreditation.

d) Likewise, the team depends upon student interaction during its visits. Since National also forbids faculty from communicating openly with current or prospective students, students are being deprived of information regarding National which they could in turn communicate to ACICS team members.

24. a) By gagging faculty and staff from speaking openly and truthfully with students and accreditors, National seeks and maintains student enrollment by fraudulent methods. Again, National has not sought to prevent its faculty from engaging in slander or defamation, but rather their sharing of truthful information. This truthful information is necessary and vital for students attempting to make well informed decisions as to whether or not they should undertake large loans from the federal government in order to attend National. Likewise, this truthful information is vital to ensure the government that National is worthy of accreditation.

C. National's Claims for Federal Government Funds

25. a) Cloaked with the shroud of ACICS accreditation, National is eligible to request HEA Title IV funds from the United States Secretary of Education (for Pell Grant funds) or from third party lenders (for government-insured loans).

26. a) For Pell Grant funds, National submits a request for those funds directly to the Secretary of the United States Department of Education.

(b) The request for funds is not a student application but a request prepared and transmitted by National to the Secretary of the United States Department of Education, stating the requested amount of funds.

(c) The United States Department of Education transfers the Pell Grant funds electronically directly into a National account.

(d) Upon receiving the Pell Grant funds, National credits the students for tuition paid.

27. (a) National's claims for the Pell Grant funds are fraudulent. When National requests, receives and retains the Pell Grant funds, National knows it is ineligible for those funds because of the fraud it engages in when dealing with its accreditors.

28. (a) For government-insured loans, National submits the request for those funds directly to a private lender.

(b) National's Application for Approval to Participate in the Federal Student Financial Aid Programs, requires proof that National is accredited by an agency recognized by the Secretary of Education.

(c) National cannot claim government-insured loans without this accreditation.

(d) National knows that its claims for federal student loans are false because National hides truthful, yet negative information from ACICS accreditation teams by coercing silence from its own faculty and staff. This intentional interference with the accreditation process renders National's accreditation meaningless and allows National to receive federal money that it knows it is not entitled to.

(e) Only students at eligible Title IV schools may receive credit for Title IV government-insured loan funds disbursed by private lenders to educational institutions.

(f) National's efforts to prevent its faculty from participating in ACICS accreditation procedures make it an ineligible educational institution to request and disburse Title IV funds, and thus its students are ineligible under the Title IV program.

(g) The lender, typically a bank, transfers the government-insured loan funds directly into a National account.

(h) Upon receiving the government-insured loan funds, National credits its students for tuition paid and returns any surpluses to the students.

29. (a) National's claims for the government-insured loan funds are fraudulent. When National requests, receives and retains the government-insured loan funds, National knows it is ineligible for those funds because of its intentional violations ACICS accreditation procedures. National knows that accreditation is a mandatory prerequisite for an institution's eligibility to request and receive Title IV funds.

30. (a) The United States Government pays all interest on the government-insured loans while the students are enrolled in classes and during authorized grace periods. The loans are guaranteed by state agencies or non-profit organizations (called "guarantee agencies"), and are subsidized and reinsured by the United States Department of Education. If a student defaults, the guarantee agency reimburses the lender. If the guarantee agency cannot collect from the student, the Department of Education reimburses the agency.

First Cause of Action:

Knowingly Presenting, or Causing to be Presented, a False or Fraudulent Claim for Payment or Approval in Violation of the False Claims Act, 31 U.SC. § 3729(a)(1)(A)

31. Plaintiffs re-allege, and fully incorporate herein by reference, paragraphs 1 through 30 herein.

32. In performing all of the acts set out herein, Defendant has defrauded and continues to defraud the United States of America by knowingly presenting, or causing to be presented, to

one or more officers, employees or agents of the United States of America, a false and fraudulent claim for payment or approval, in contravention of the False Claims Act (31 U.S.C. § 3729(a)(3)), to the damage of the treasury of the United States of America, by causing the United States to pay out money it was not obligated to pay.

Second Cause of Action:

Knowingly Making, Using, or Causing, to be Made or Used, a False Record or Statement Material to a False or Fraudulent Claim in Violation of the False Claims Act, 31 U.S.C. §3729(a)(1)(B)

33. Plaintiffs re-allege, and fully incorporate herein by reference, paragraphs 1 through 32 herein.

34. By virtue of the acts described above, Defendants have knowingly made, used or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the United States of America, in contravention of the False Claims Act (31 U.S.C. § 3729(a)(2)), to the damage of the treasury of the United States of America, by causing it to pay out money it was not obligated to pay.

Third Cause of Action:

Conspiring to Commit a Violation of Subparagraphs (A) and (B) of the False Claims Act, 31 U.S.C. §3729(a)(1)

35. Plaintiffs re-allege, and fully incorporate herein by reference, paragraphs 1 through 34 herein.

35. By virtue of the acts described above, Defendants have conspired to violate subparagraphs (A) and (B) of the False Claims Act, 31 U.S.C. §3729(a)(1), to the damage of the

treasury of the United States of America, by causing it to pay out money it was not obligated to pay.

Prayer for Relief

WHEREFORE, Plaintiffs request the following relief:

1. Judgment in favor of the United States of America against Defendants, jointly and severally, by reason of the violations of the False Claims Act as set forth above, in an amount equal to three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty of not less than Five Thousand Dollars ($5,000.00), and not more than Ten Thousand Dollars ($10,000.00), for each violation, plus three times the amount of damages which the United States Government has sustained, pursuant to 31 U.S.C. § 3729(a);

2. Award to Relator, as the Qui Tam plaintiffs, of the maximum amount allowed pursuant to 31 U.S.C. § 3730(d) of the Federal False Claims Act on the United States' recovery;

3. Award to Relator of all reasonable expenses which the Court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs;

4. Punitive damages on all causes of action, to the extent allowable by law; and

5. Such other and further relief as the Court deems proper.

Demand for Jury Trial

Plaintiffs demand a trial by jury, pursuant to FRCP 38.

Respectfully submitted,

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